

ORDINANCE NO. 1065

AN ORDINANCE OF THE CITY OF BELMONT, CALIFORNIA, AMENDING THE BELMONT CITY CODE BY ADDING CHAPTER 31 "WASTE REDUCTION" AND ADOPTING BY REFERENCE SAN MATEO COUNTY ORDINANCE CODE CHAPTER 4.107 "PROHIBITION ON THE USE OF POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS"

The City Council of the City of Belmont does ordain as follows:

SECTION 1. LEGISLATIVE FINDINGS.

The City Council finds that:

(a) After the first reading of this ordinance, the City Council scheduled a public hearing on July 10, 2012.

(b) Notice of the public hearing stating the time and place of the hearing, stating that copies of San Mateo County Ordinance Code Chapter 4.107 are on file with the City Clerk and open to public inspection, and providing a description of this ordinance and its subject matter was published one a week for two weeks in a newspaper of general circulation before the public hearing as required by Government Code Section 6066.

(c) The description provided in the published public notice was sufficient to give notice to interested parties of the purpose of the ordinance and its subject matter.

(d) The ordinance description adequately summarized the ordinance for purposes of Government Code Section 36933(c)(1).

(e) Since before the publication of the public hearing notice, and for a period of at least 15 days before the public hearing, the City Clerk has continuously maintained at least one certified copy of San Mateo County Ordinance Code Chapter 4.107 on file in the City Clerk's Office for public inspection.

(f) The City has complied with the requirements of Government Code Section 50022.2 through 50022.9 for adopting a County code by reference.

SECTION 2. CHAPTER 31 ADDED.

Belmont City Code Chapter 31 (Waste Reduction) is added as follows:

CHAPTER 31. WASTE REDUCTION

Sec. 31-10 Findings.

The City Council finds that:

(a) Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the City of Belmont. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature.

(b) Polystyrene-based, single-use food service ware constitutes a substantial portion of the litter found on streets, streams, creeks, and in the City of Belmont's storm drain system.

(c) Effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, or sugarcane.

(d) The use of polystyrene-based disposable food service ware by food vendors should be restricted.

(e) The County of San Mateo has adopted an ordinance prohibiting food vendors from using polystyrene based disposable food service ware. Section 4.107.080 of the County's Ordinance Code authorizes the County Environmental Health Division to enforce the prohibition in the incorporated areas of the County if a city adopts San Mateo County Ordinance Code Title 4, Chapter 4.107 by reference and authorizes the Environmental Health Division to enforce the code.

(f) Adoption of San Mateo County Ordinance Code Title 4, Chapter 4.107 by the City of Belmont will reduce the amount of polystyrene litter on City streets and sidewalks, and in storm drains and creeks, and reduce the amount of non-reusable, non-biodegradable waste generated in the City of Belmont.

**Sec. 31-11 Adoption of San Mateo County Ordinance Code Chapter 4.107
(Prohibition on the Use of Polystyrene Based Disposable Food Service
Ware by Food Vendors).**

(a) San Mateo County Ordinance Code Title 4, Chapter 4.107 entitled "Prohibition on the Use of Polystyrene Based Disposable Food Service Ware By Food Vendors" as adopted by the San Mateo County Board of Supervisors on March 1, 2011, is hereby adopted by reference under Government Code Section 50022.9. Amendments to Chapter 4.107 as may be adopted by the Board of Supervisors shall not be effective unless subsequently adopted by the City Council in accordance with Government Code Section 50022.7.

(b) The City Clerk is directed to maintain at least one copy of Chapter 4.107 on file in the City Clerk's Office for public inspection.

(c) The regulations set forth in San Mateo County Ordinance Code Chapter 4.107 as adopted by subsection (a) shall be effective and enforced in the City of Belmont beginning October 1, 2012.

Sec. 31-12 Administration and Enforcement by County of San Mateo.

(a) Subject to such terms and conditions as may be required by the City Manager, the County of San Mateo Environmental Health Division is authorized to administer and enforce San Mateo County Ordinance Code Title 4, Chapter 4.107, as adopted herein and when effective as provided in Section 31-11(c), within the City of Belmont, including issuing of administrative fines and holding hearings. The City Manager is authorized to execute agreements with the County necessary to implement the authority provided by this section.

(b) The authority provided by this section supplements all other authority of the City and shall not limit the authority of the City to enforce the regulations adopted by reference in Section 31-11.

Sec. 31-13 References to Director of the Environmental Health Division.

For purposes of administration and enforcement by the City of Belmont, all references in San Mateo County Ordinance Code Title 4, Chapter 4.107 to the Director of the Environmental Health Department shall mean the City Manager or designee.

Sec. 31-14 Violation.

(a) It is unlawful for a food vendor to use polystyrene in violation of the regulations adopted by Section 31-11.

(b) Violation of the regulations adopted by Section 31-11 is an offense that may be charged as set forth in Section 1-8.

(c) Violation of the regulations adopted by Section 31-11 may be remedied by any means available to remedy a violation of this Code. The remedies for violation of Section 31-11 are cumulative.

(d) Administrative fines issued under Chapter 30 for violation of the regulations adopted by Section 31-11 shall be as follows: \$100 for a first violation, \$200 for a second violation, and \$500 for a third and subsequent violations.

SECTION 3. CEQA - EXEMPTION.

The City Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that a Notice of Exemption be filed with the San Mateo County Clerk in accordance with the CEQA guidelines.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares

that it would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. EFFECTIVE DATE.

This ordinance shall be effective 30 days after adoption.

SECTION 6. PUBLICATION AND POSTING.

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under section 36933(c) of the Government Code, once, in a newspaper of general circulation printed and published in San Mateo County and circulated in the City of Belmont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary of this ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

* * *

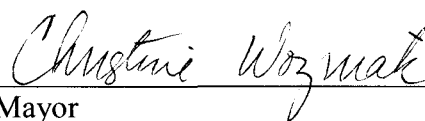
The foregoing ordinance was introduced before the City Council of the City of Belmont, California, at the regular meeting of the City Council, held on the 12th day of June, 2012 and finally adopted at a regular meeting of the City Council held on the 10th day of July, 2012 by the following vote, to wit:

AYES: Feierbach, Braunstein, Wozniak, Warden


NOES: None

ABSTAINED: None


ABSENT: Lieberman


Vice Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

ORDINANCE NO. 04542
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

* * * * *

AN ORDINANCE ADDING CHAPTER 4.107, COMPRISING OF SECTIONS 4.107.010 THROUGH 4.107.080 TO TITLE 4 OF THE SAN MATEO COUNTY ORDINANCE CODE PROHIBITING FOOD VENDORS FROM USING POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows

SECTION 1. Chapter 4.107, comprising of sections 4.107.010 through 4.107.080, is hereby added to Title 4 of the San Mateo County Ordinance Code and shall read as follows:

Chapter 4.107 PROHIBITION ON THE USE OF POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS

4.107.010 Findings and purpose.

The Board of Supervisors finds and determines that:

- (a) Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the County of San Mateo. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature.
- (b) Polystyrene-based, single-use food service ware constitutes a substantial portion of the litter within the County of San Mateo.
- (c) Effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using

compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane.

- (d) This Board does, accordingly, find and declare that it should restrict the use by food vendors of polystyrene-based disposable food service ware.

4.107.020 Definitions.

For purposes of this chapter, the following terms have the following meanings:

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils, or cup lids nor does it include disposable packaging for unprepared foods.
- (b) "Food vendor" means any vendor, business, organization, entity, group or individual, including a licensed retail food establishment that provides prepared food at a retail level.
- (c) "Polystyrene-based" means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including , but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene (EPS)), and clear or solid polystyrene known as oriented polystyrene.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to

prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.

- (e) "Prepared food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared. Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

4.107.030 Prohibited use polystyrene-based disposable food service ware.

No food vendor shall use polystyrene-based disposable food service ware when providing prepared food.

4.107.040 Exemptions.

- (a) Prepackaged food is exempt from the provisions of this chapter.
- (b) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this chapter.
- (c) Food vendors at the San Francisco International Airport are exempt from the provisions of this chapter.

4.107.050 Request For An Exemption.

Any food vendor may seek an exemption from the requirements of this chapter upon demonstrating that strict application of the requirements would cause undue hardship.

- (a) An "undue hardship" shall be found in:
 - (1) Situations unique to the food vendor where a suitable alternative does not exist for a specific application; and/or
 - (2) Situations where no reasonably feasible available alternative exists to a

specific and necessary container prohibited by this chapter.

- (b) The application process for exemption shall be as follows:
 - (1) The food vendor seeking an exemption shall submit a written exemption request to the Environmental Health Division.
 - (2) A written exemption request shall include all information and documentation necessary for the Director of the Environmental Health Division to make a finding that imposition of this chapter would cause an undue hardship as defined in Section 4.107.050(a).
 - (3) The Director of the Environmental Health Division may require the applicant to provide additional information in order to make a determination regarding the exemption application.
 - (4) Exemption decisions are effective immediately and are final and not subject to appeal.
 - (5) The Director of the Environmental Health Division or his/her designee may grant an exemption for a period of up to one year upon a finding that the food vendor seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship as defined in 4.107.050 (a).
- (c) If a food vendor granted an exemption wishes to have the exemption extended, it must re-apply for the exemption prior to the expiration of the one year exemption period and demonstrate continued undue hardship. Extensions may be granted for intervals not to exceed one year.

4.107.060 Administrative fine.

- (a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, or his or her designee, that any food vendor

has used polystyrene-based disposable food service ware in violation of this Chapter.

- (b) Amount of Fine. Upon findings made under subsection (a), the food vendor shall be subject to an administrative fine as follows:
 - (1) A fine not exceeding one hundred dollars (\$100) for a first violation;
 - (2) A fine not exceeding two hundred dollars (\$200) for a second violation;
 - (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;
 - (4) Each day that a food vendor uses polystyrene-based disposable food service ware when providing prepared food shall constitute a separate violation.
- (c) Fine Procedures. Notice of the fine shall be served on the food vendor. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be either that (1) the food vendor did not use polystyrene-based disposable food service ware when providing prepared food or (2) the food vendor would have been granted an exemption under 4.107.050 if the food vendor had applied for such exemption. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that one of the above listed grounds for a contest have been met and shall be a final administrative order, with no administrative right of appeal.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine

shall be referred to a collection agency.

4.107.070 Severability.

If any provision of this chapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

4.107.080 Enforcement of this chapter when adopted.

The Environmental Health Division is hereby directed to enforce Chapter 4.107 of Title 4 within an incorporated area of the County of San Mateo if the governing body of that incorporated area does each of the following:

- (a) Adopts, and makes part of its municipal code:
 - (1) Chapter 4.107 of Title 4 in its entirety by reference; or
 - (2) An ordinance that contains each of the provisions of Chapter 4.107 of Title 4;
- (b) Authorizes, by ordinance or resolution, the Environmental Health Division to enforce the municipal code adopted pursuant to subsection (a) of this section, such authorization to include, without limitation, the authority to hold hearings and issue administrative fines within the incorporated area of the public entity.

SECTION 2. This Ordinance shall be effective as of July 1, 2011.

* * * * *

Regularly passed and adopted this 1st day of March, 2011.

AYES and in favor of said ordinance:

Supervisors:

CAROLE GROOM

DON HORSLEY

ROSE JACOBS GIBSON

ADRIENNE J. TISSIER

NOES and against said ordinance:

Supervisors:

NONE

Absent Supervisors:

NONE

Carole Groom

President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

I certify that a copy of the original ordinance filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Marie L. Peterson

Marie L. Peterson, Deputy
Clerk of the Board of Supervisors